

Starting from the End: A Framework to Assess the Harms of Crime

Letizia Paoli

University of Leuven, Faculty of Law

(with Victoria A. Greenfield, George Mason University)

University of Cambridge Institute of Criminology

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Outline

➤ Introduction

- Framework and illustrative applications
- Methodological insights
- Potential contributions to criminology and policy analysis

Why consequences, why harm?*

- Address criticisms of traditional criminology raised “from the left and the right” (Laub, 2004: 8)
- Provide evidence for good governance
 - Establishing priorities for crime-control policy
 - Making policy more cost effective
 - Improving accountability of policy
 - Operationalizing key criterion for criminalization

Harm is central to crime

*Paoli , L. and V. Greenfield (2015). ‘Starting from the End: A Plea for Focusing on the Consequences of Crime’. *European Journal of Crime, Criminal Law and Criminal Justice* 23: 87-100.

Harm is gaining ground in policy, practice, and academia...

- Under consideration and/or in-use as benchmark for strategic and operational priorities
 - E.g., Finland (Lappi Seppala, 2007), UK (SOCA, 2008), Europol SOCTA (2013), elsewhere (Tusikov, 2012)

EU crime priorities based on harm*

Key threats

Based on the findings of this assessment Europol recommends that the operational response to serious and organised crime in the EU should focus on the following high priority threats:

- **Facilitation of Illegal Immigration**
- **Trafficking in human beings**
- **Counterfeit goods with an impact on public health and safety**
- **Missing Trader Intra Community (MTIC) fraud**
- **Synthetic drugs production and poly-drug trafficking in the EU**
- **Cybercrime**
- **Money laundering**

FACILITATION OF ILLEGAL IMMIGRATION

HARM

Facilitated migrants can suffer severe physical, psychological and social harm. Over the past few years, there have been an increasing number of reports of migrants losing their lives during journeys. Attempts to cross the sea or "blue" borders are particularly dangerous and have claimed the lives of many migrants. Emerging facilitation techniques are very risky and include clandestine entry in refrigerated vehicles and tankers or concealment in plastic bags sealed with tape.

Some facilitators use violence to intimidate migrants. Upon arrival in their destination countries, migrants suffer further due to their illegal status and lack of access to public services such as education, housing and health care.

* Paoli, L. (2014).
Paoli, L. 2014. 'How to Tackle (Organized) Crime in Europe? The EU Policy Cycle on Serious and Organized Crime and the New Emphasis on Harm.' *European Journal of Crime, Criminal Law and Criminal Justice*, 22: 1-12.

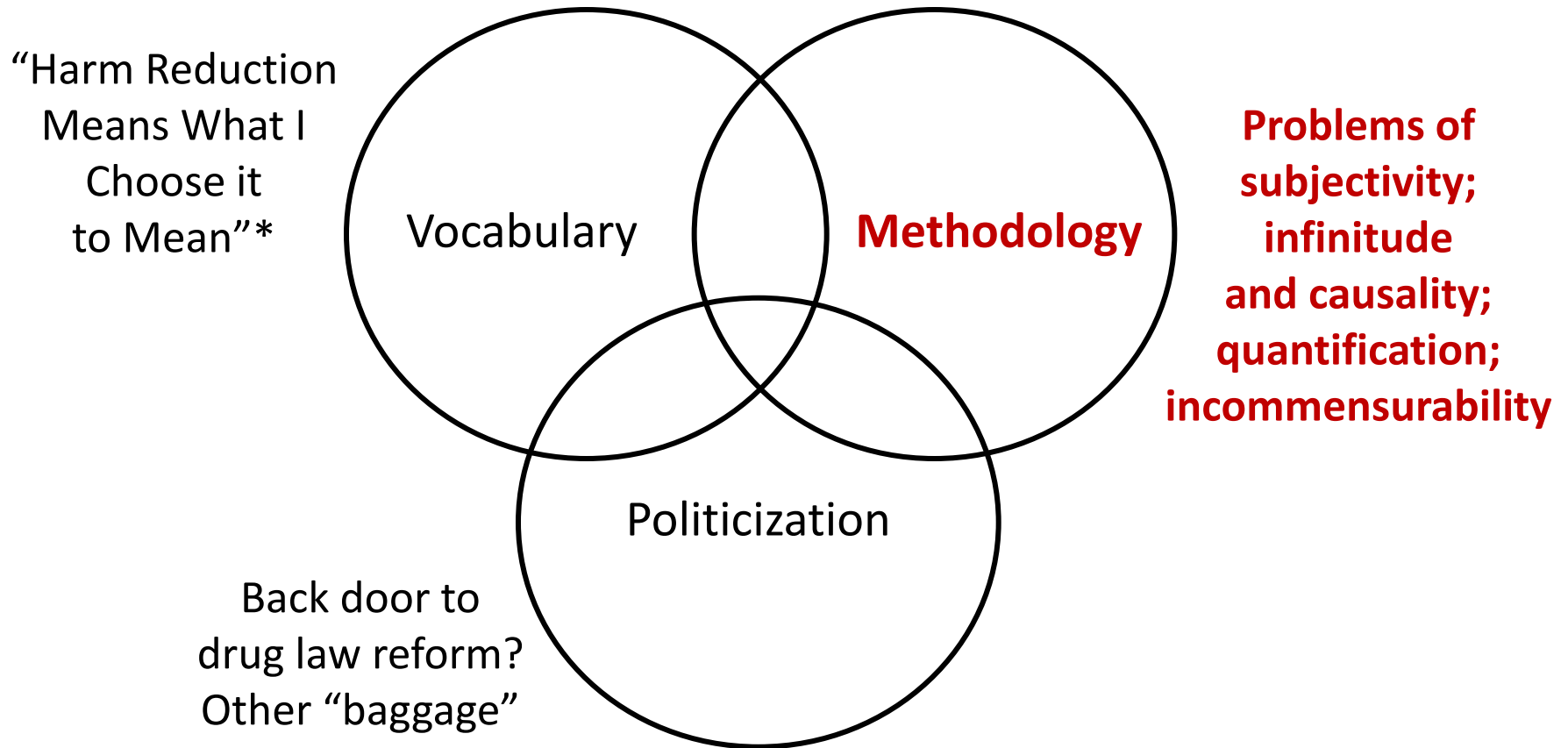
Urgent need for solid and independent assessment

Harm is gaining ground in policy, practice, and academia...

- Under consideration and/or in-use as benchmark for strategic and operational priorities,
 - E.g., Finland (Lappi Seppala, 2007), UK (SOCA, 2008), Europol SOCTA (2013), elsewhere (Tusikov, 2012)
- Focus of recent academic inquiry, e.g.,*
 - Greenfield and Paoli (2012, 2013), Paoli et al. (2013, 2015), drawing from von Hirsh and Jareborg (1991), Sen (1987), and national security literature
 - Sherman (2007, 2013) and Ratcliffe (2014)
 - Others continue to address costs-of-crime, perceived seriousness, impact of criminal victimization, drug-related harms, and related concepts

* Paoli, L. and V.A. Greenfield. (2013). 'Harm: A Neglected Concept in Criminology, A Necessary Benchmark in Crime Policy'. *European Journal of Crime, Criminal Law and Criminal Justice* 21: 359–377.

...But challenges abound



Framework provides means to overcome many, not all

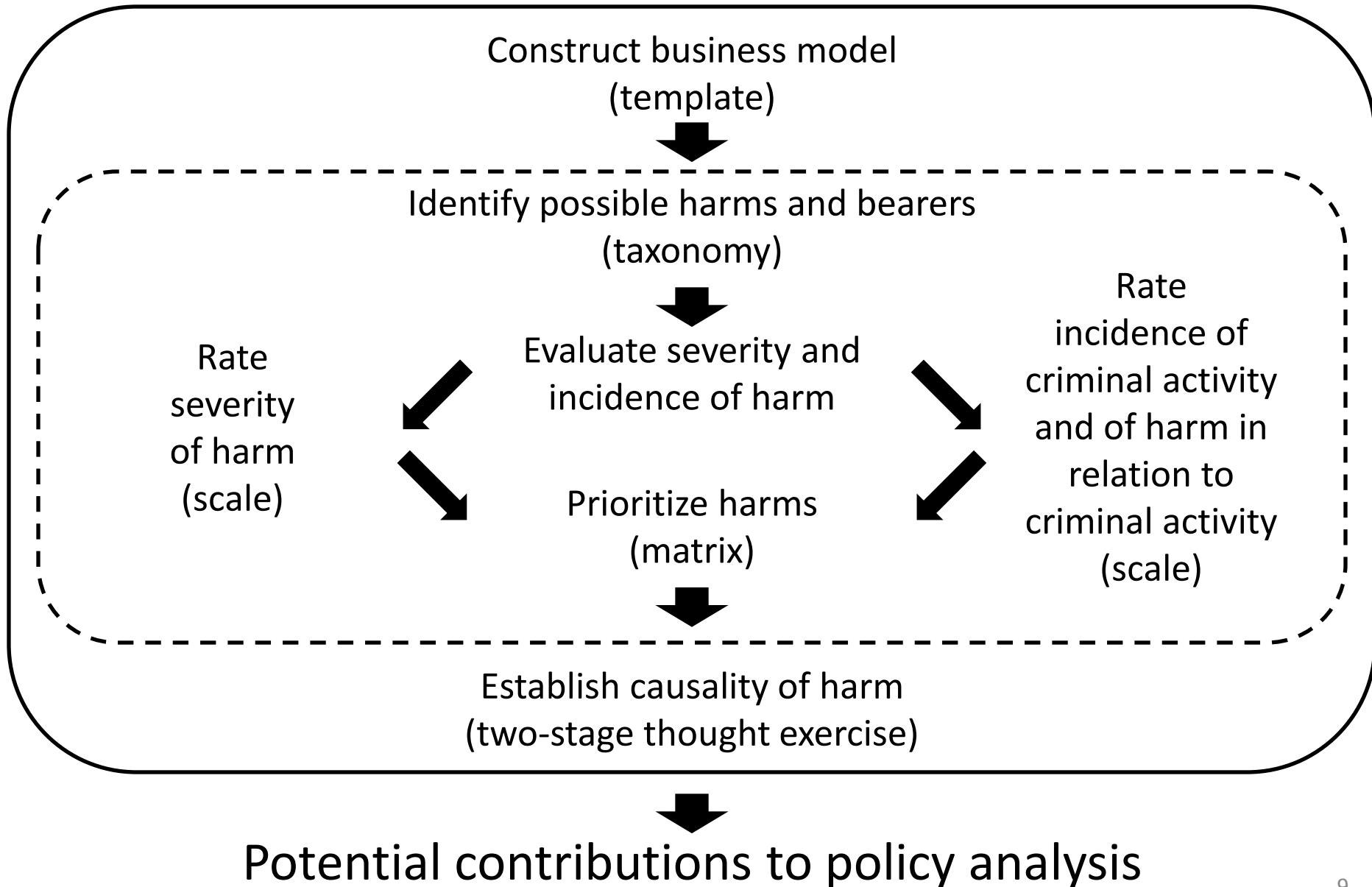
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- Potential contributions to criminology and policy analysis

* Greenfield, V., and Paoli, L., (2013). 'A Framework to Assess the Harms of Crimes,' *British Journal of Criminology*, 53: 864–885.

Paoli, L., Greenfield, V. A. and Zoutendijk, A. (2013), 'The Harms of Cocaine Trafficking: Applying a New Framework for Assessment', *Journal of Drug Issues*, 43(4): 407-436.

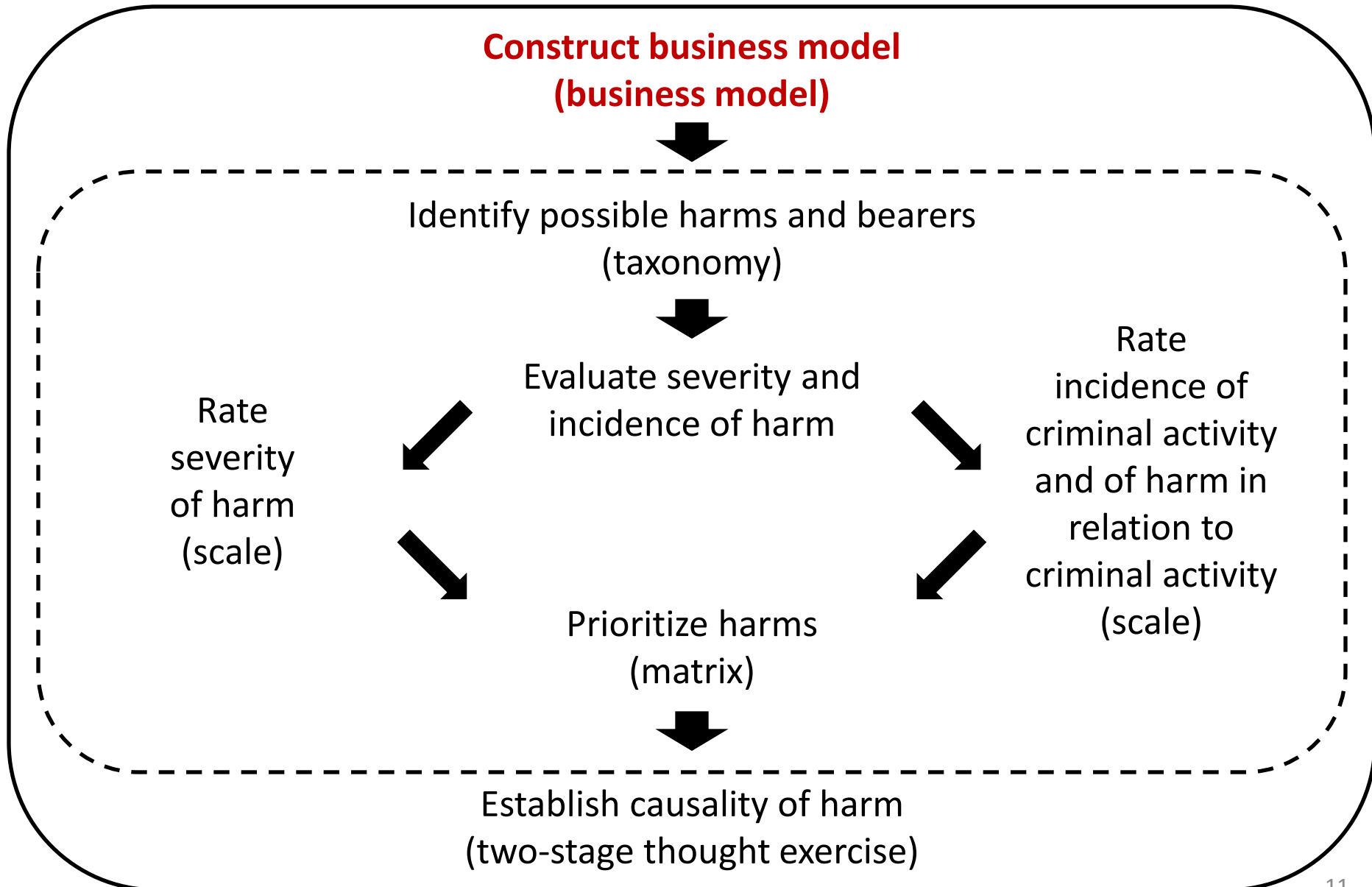
Framework consists of process and tools



Applications illustrate approach

	Belgium (BE)		The Netherlands (NL)	
Activities				
Primary	Cocaine trafficking		Cocaine trafficking	
Accompanying	Money laundering, corruption, violence		Money laundering corruption, violence	
Enabled (assessed)	Dealing		--	
Market position	Major entry point for EU		Major entry point for EU	
Sources of evidence				
Criminal proceedings	52	2003-2009	10	2001-2011
OC database files	81 total; 42 additional	2006-2008	--	--
Official reports/statistics	Yes	Various	Yes	Various
Interviews				
Law enforcement experts	15	2010-2011	28	2011-2012
Imprisoned perpetrators	12	2010-2011	13	2011-2012
Scientific and media reports	Yes	Various	Yes	Various

Working through harm assessment process



Business model fuels process

- Depicts operational phases of “primary” activity
- For complex crimes, also describes roles and modes of “accompanying” and “enabled” activities

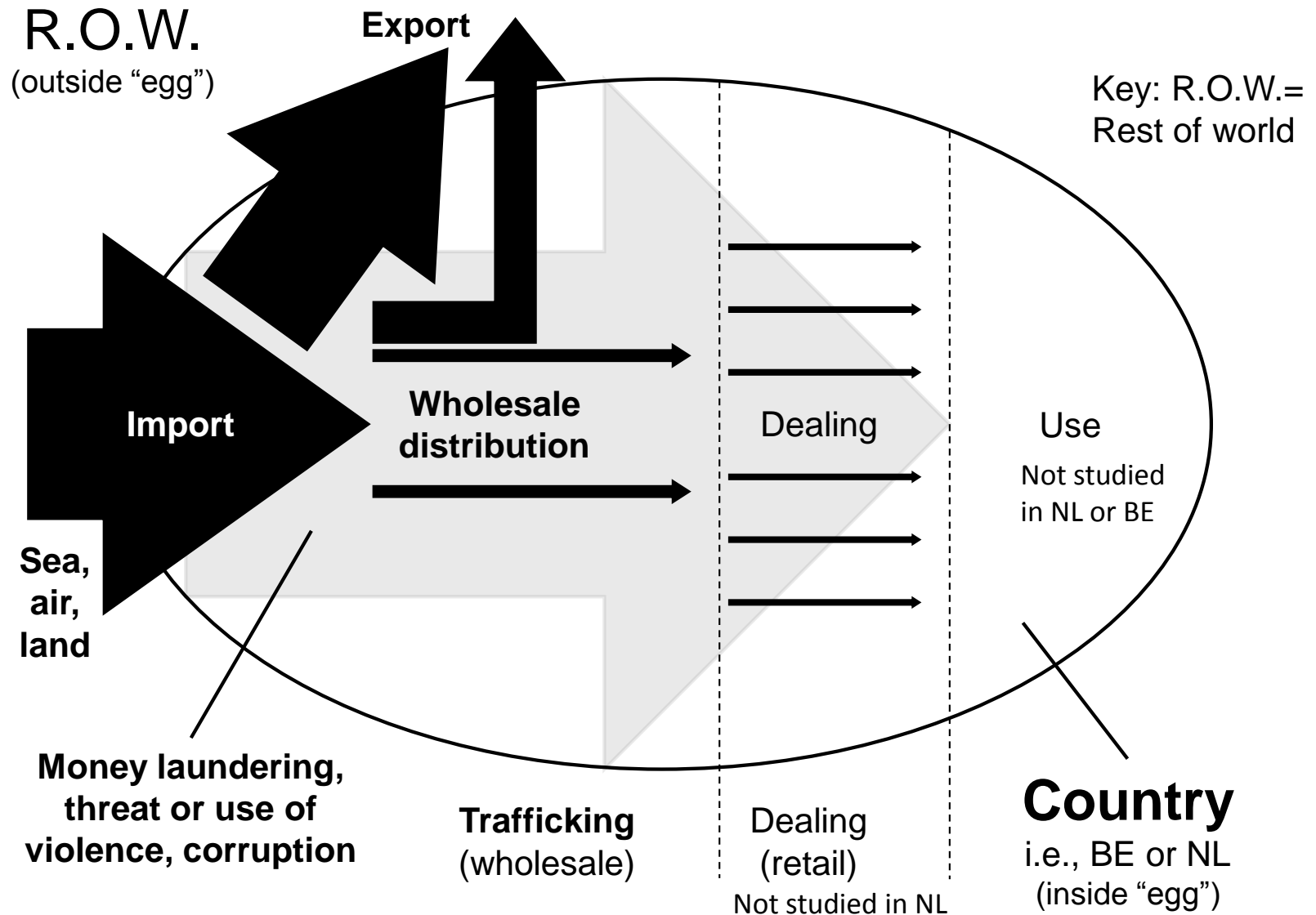
Draft template for business model

ACTIVITIES	ACTORS	ACTIONS	RESOURCES	PLACES
Phases of the main activity, e.g.,				
• <i>Import</i>				
• <i>Wholesale</i>				
• <i>Export</i>				
Accompanying activities, e.g.,				
• <i>Use or threat of violence, e.g.,</i>				
- Threat of violence				
-				
- Murder				
• <i>Corruption</i>				
- Petty corruption				
- Grand corruption				
- “Political” corruption				
• <i>Money laundering</i>				
Enabled activities, e.g.,				
• <i>Retail</i>				
• <i>Drug use</i>				

Business model fuels process

- Depicts operational phases of “primary” activity
- For complex crimes, also describes roles and modes of “accompanying” and “enabled” activities
- Provides building blocks of information or “evidentiary base” for
 - identifying possible harms
 - evaluating their severity and incidence
 - prioritizing them
 - establishing their causality

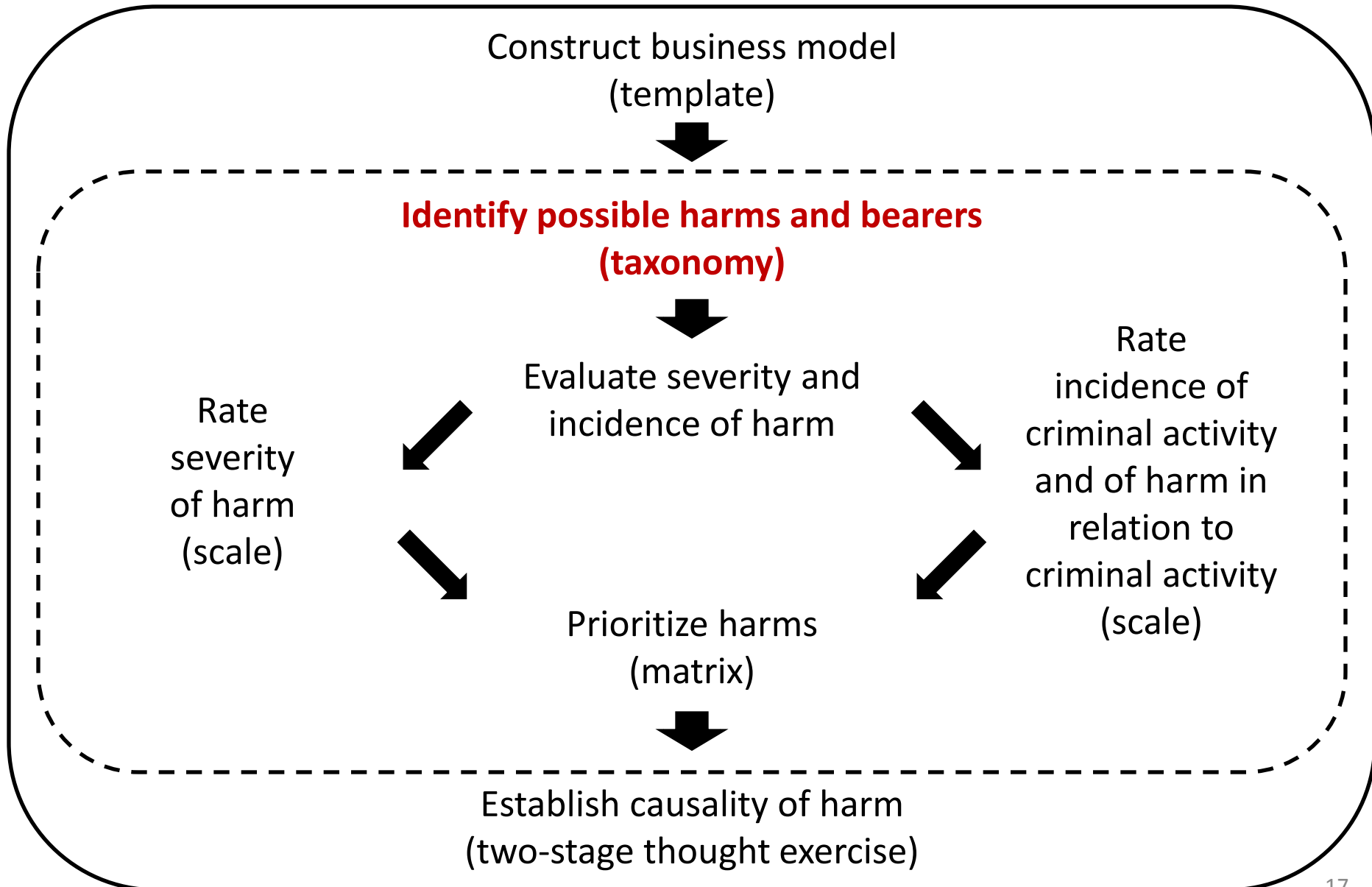
Traffickers exploit air, sea, and land with modicum of corruption and violence



Business models in BE and NL similar

- Imports far exceed consumption in both countries
- Cocaine enters mainly via air (Schiphol, Brussels) and sea (Rotterdam, Antwerp), using like tactics
- Trafficking over land occurs between NL and BE and to/from other markets, but open borders impede detection
- Data on wholesale distribution and export are sketchy, but NL plays greater distributional role, with more exchanges
- Little evidence of government corruption in either country, but facilitation occurs in logistics sector
- Revenues largely smuggled or stashed, but some laundering occurs through businesses and investment
- Limited violence in both countries, but violence in NL might be somewhat greater than in BE

Working through harm assessment process



Taxonomy delineates types and bearers

	BEARER OF HARM			
	Individuals	Private-Sector Entities	Government Entities	Environment
TYPE OF HARM				
Functional integrity	X*	X**	X**	X***
Material interests	X	X	X	n/a
Reputation	X	X	X	n/a
Privacy	X	X	X	n/a

SOURCE: Authors (2013) drawing from von Hirsch and Jareborg (1991) and others.

NOTES: X = applicable; n/a = not applicable;

* Functional integrity = Physical and psychological integrity;

** Functional integrity = Operational integrity;

*** Functional integrity = Physical, operational, and aesthetic integrity

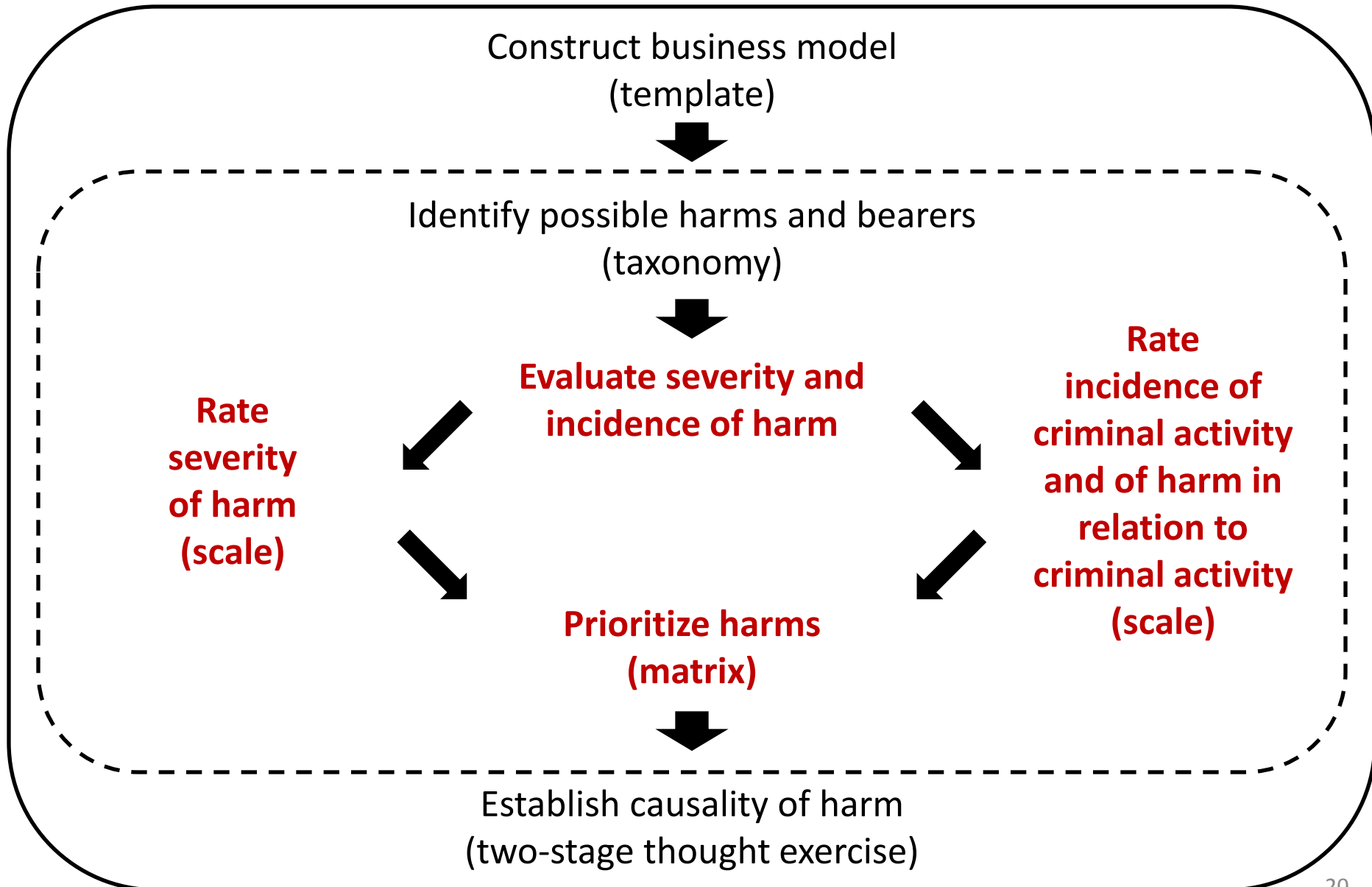
Possible harms span individuals, entities, and interests

	Trafficking	Money laundering	Corruption	Violence
Functional integrity	Ind (LL) PVT	PVT (NL only)	PVT GVT	Ind (LL)
Material interests	Ind PVT GVT	PVT (NL only)	PVT GVT	Ind GVT*
Reputation	PVT GVT	PVT (NL only) GVT	PVT GVT	Ind GVT
“Privacy”	PVT	PVT (NL only)	PVT GVT	n/a

NOTES: Ind = individual; LL = including loss of life; PVT = private sector; GVT = government; NL = The Netherlands; n/a = not applicable.

*Omitted from our prior (published) analysis of cocaine trafficking in Belgium.

Working through harm assessment process



Common benchmarks gauge severity

SEVERITY RATING	Level of individual's living standard at which damage occurs	Level of entity's mission attainment at which damage occurs
Catastrophic	1°: Subsistence, consisting of survival, but with maintenance of no more than elementary capacities to function	1°: Viability, consisting of survival, but with maintenance of no more than elementary capacities to function
Grave	2°: Minimal standard of living	2°: Minimal mission attainment
Serious	3°: Adequate standard of living	3°: Adequate mission attainment
Moderate	4°: Enhanced standard of living	4°: Enhanced mission attainment
Marginal	Negligible at any level	Negligible at any level

SOURCES: Authors (2013) drawing from von Hirsch and Jareborg's (1991), living standard approach, and Sen's (1987) work on capabilities.

Examples

- Death (e.g., by homicide) is “catastrophic”
- Petty assault might produce “marginal” harm to physical integrity but “moderate” harm to psychological integrity, incl. dignity, and reputation
- Drug dealing may affect the social environment “seriously” in given neighborhood but “marginally” to “moderately” in broader perspective

**Assessment requires standardization
and specification of level of analysis**

Incidence provides grounding for prioritizing harms

Matrix of severity, incidence, and priorities

SEVERITY	INCIDENCE				
	Continuously	Persistently	Occasionally	Seldom	Rarely
Catastrophic	VH	H	H	H/M	M/H
Grave	H	H	H/M	M/H	M
Serious	H	H/M	M/H	M	L
Moderate	H/M	M/H	M	L	L
Marginal	M/H	M	L	L	L

SOURCE: Authors based on Greenfield and Camm (2005), US Army (2001, 2014).

NOTES: **VH** = very high; **H** = high; **M** = medium; **L** = Low priority.

**Matrix offers preliminary basis
for addressing incommensurability**

Other distinctive features of approach

- Applicable to most crimes, including complex
- Attributes harms to ultimate bearers*
- Excludes law enforcement costs
 - Typically included in “cost of crime” analyses
 - But inclusion creates vicious cycle, i.e., most-prioritized activities are, by definition, most-harmful
- Excludes avoidance or mitigation costs
- Includes repair and/or replacement costs
- Excludes losses of ill-gotten property, losses to illegal entities, and benefits from illegal activity

*As close to ultimate as data and methods permit.

Actual harms to individuals similar in NL & BE*

	Severity	Incidence**	Priority	Activity
HARMS TO INDIVIDUALS, specifically to their:				
Functional integrity				
Loss of life	Catastrophic	Rarely	H/M _i	<ul style="list-style-type: none"> - Trafficking (i.e., fatal injuries to body packers) - Trafficking (i.e., fatal accidents) (NL only) - Violence in trafficking (e.g., murder) (NL only)
Other physical and psychological	Grave	Rarely	M _i	<ul style="list-style-type: none"> - Trafficking (i.e., non-fatal injuries to body packers) - Violence in trafficking (e.g., assault)
	Serious	Rarely	L _i	"
	Moderate	Seldom (NL) Rarely (BE)	L _i	"
	Marginal	Seldom to Occasionally (NL) Rarely to seldom (BE)	L _i	- Violence in trafficking (e.g., petty assault)
	Marginal	Rarely	L _i	- Trafficking (i.e., non-fatal injuries to body packers)
Only psychological	Marginal	Occasionally	L _i	<ul style="list-style-type: none"> - Trafficking (i.e., non-fatal injuries to body packers) - Violence in trafficking (e.g., intimidation)
Reputation	Moderate	See above***	L _i	- Violence in trafficking (e.g., assault)
	Marginal	See above***	L _i	- Violence in trafficking (e.g., petty assault, intimidation)

*Estimates exclude harms associated with cocaine dealing and use.

**Overall incidence, accounting for incidence of activities and of harms in relation to activities.

***Maps to incidence of episodes of violence.

Actual harms to others similar in NL & BE*

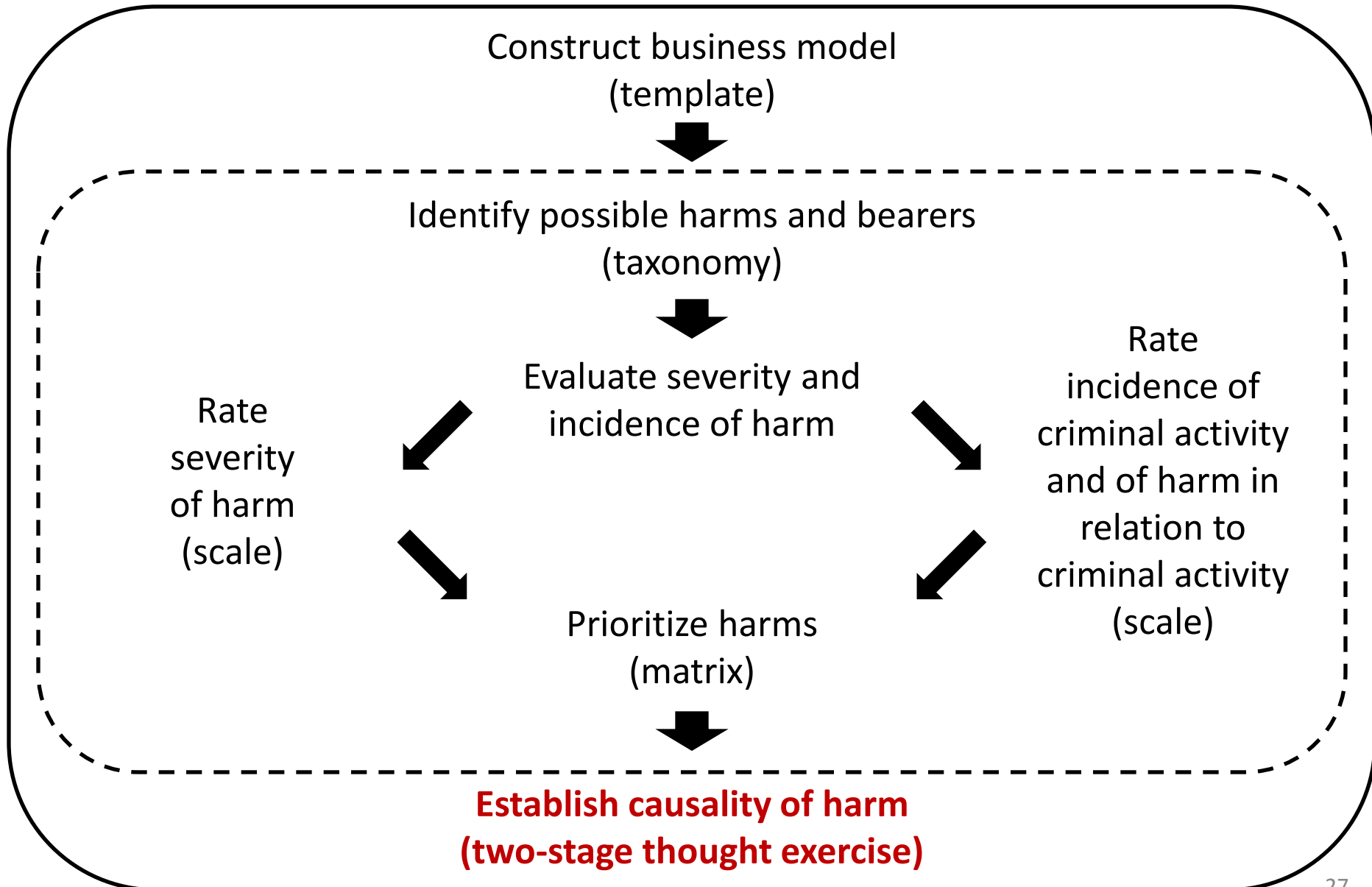
	Severity	Incidence**	Priority	Activity
HARMS TO PRIVATE-SECTOR ENTITIES, specifically to their:				
Functional integrity	Marginal	Occasionally	L _{PS}	- Corruption in trafficking
	Marginal	Rarely	L _{PS}	- Money laundering (NL only)
Material interests	Marginal	Rarely	L _{PS}	- Money laundering (NL only)
Reputation	Marginal	Occasionally	L _{PS}	- Corruption in trafficking
	Marginal	Rarely	L _{PS}	- Money laundering (NL only)
“Privacy”	Marginal	Occasionally	L _{PS}	- Corruption in trafficking
HARMS TO GOVERNMENT ENTITIES, specifically to their:				
Functional integrity	Marginal	Rarely	L _G	- Corruption in trafficking
Material interests	Moderate	See above***	L _G	- Trafficking and violence (i.e., medical treatment of fatal and non-fatal overdoses and assaults)
	Marginal	See above***	L _G	- Violence (i.e., medical treatment of petty assaults)
Reputation	Marginal	Rarely	L _G	- Corruption in trafficking - Money laundering (NL only)
	Marginal	Persistently	M _G	- All criminal activities (i.e., non-enforcement effect)

*Estimates exclude harms associated with cocaine dealing and use.

**Overall incidence, accounting for incidence of activities and of harms in relation to activities.

***Maps to incidence of episodes of overdose and/or violence.

Working through harm assessment process



Policy plays substantial role in non-use-related harms

- Most non-use-related, direct harms arise from illegal status and specific enforcement practices
 - Harms associated with trafficking, money laundering, violence, and corruption studied in BE and NL
 - Harms of dealing studied only in BE
- Use-related harms are “remote” and TBD
 - To what extent are they really caused by trafficking?
 - Some harms arise from properties of drug, but policy, modes of enforcement, etc. also play part

Summary of findings

- Harms of trafficking mostly “L,” with few exceptions, despite large flows*
- Harms of trafficking mostly due to drug-control policy and law enforcement practices in both venues
 - Harms appear to accrue largely in relation to risks and opportunities for compensation

*Use-related harms likely much larger, but they are “remote” and not assessed in this analysis

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What have we learned?

- Applications suggest larger potential of framework to produce reliable, multi-faceted, and policy-relevant harm assessments
 - Refutation of popular wisdom demonstrates value of systematic, evidence-based analysis to policy
- Applications highlight tradeoffs between conceptual /technical “fidelity” and point estimates
 - Framework enables comparisons of harms, by rankings and distribution, within categories of bearers, e.g., individuals
 - Framework does not enable either comparisons of harms across categories or aggregation of harms

Framework addresses challenges

CHALLENGE	APPROACH
Subjectivity/morality	Explicit criteria and transparency
Infinitude	Taxonomy claims to be encompassing, not exhaustive; accommodates harms of complex crimes that entail immediate, accompanying, and enabled activities
Causality	Taxonomy speaks of harms “associated with” criminal activity; assessment process includes evaluation
Quantification	Scales exploit quantitative <i>and</i> qualitative data
Incommensurability	Matrix and underlying benchmarks enable limited comparisons (rankings and distribution) within categories of bearers

Hurdles remain

Standardization (average individual, typical entity),
“denominators” and matters of degree in severity and incidence,
ease of use

Framework addresses challenges

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Subjectivity	Explicit criteria and transparency
Infinitude	Taxonomy claims to be encompassing, not exhaustive; accommodates harms of complex crimes that entail immediate, accompanying, and enabled activities
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“Why must we reject being vaguely right in favor of being precisely wrong?” Sen (1987)

Hurdles remain

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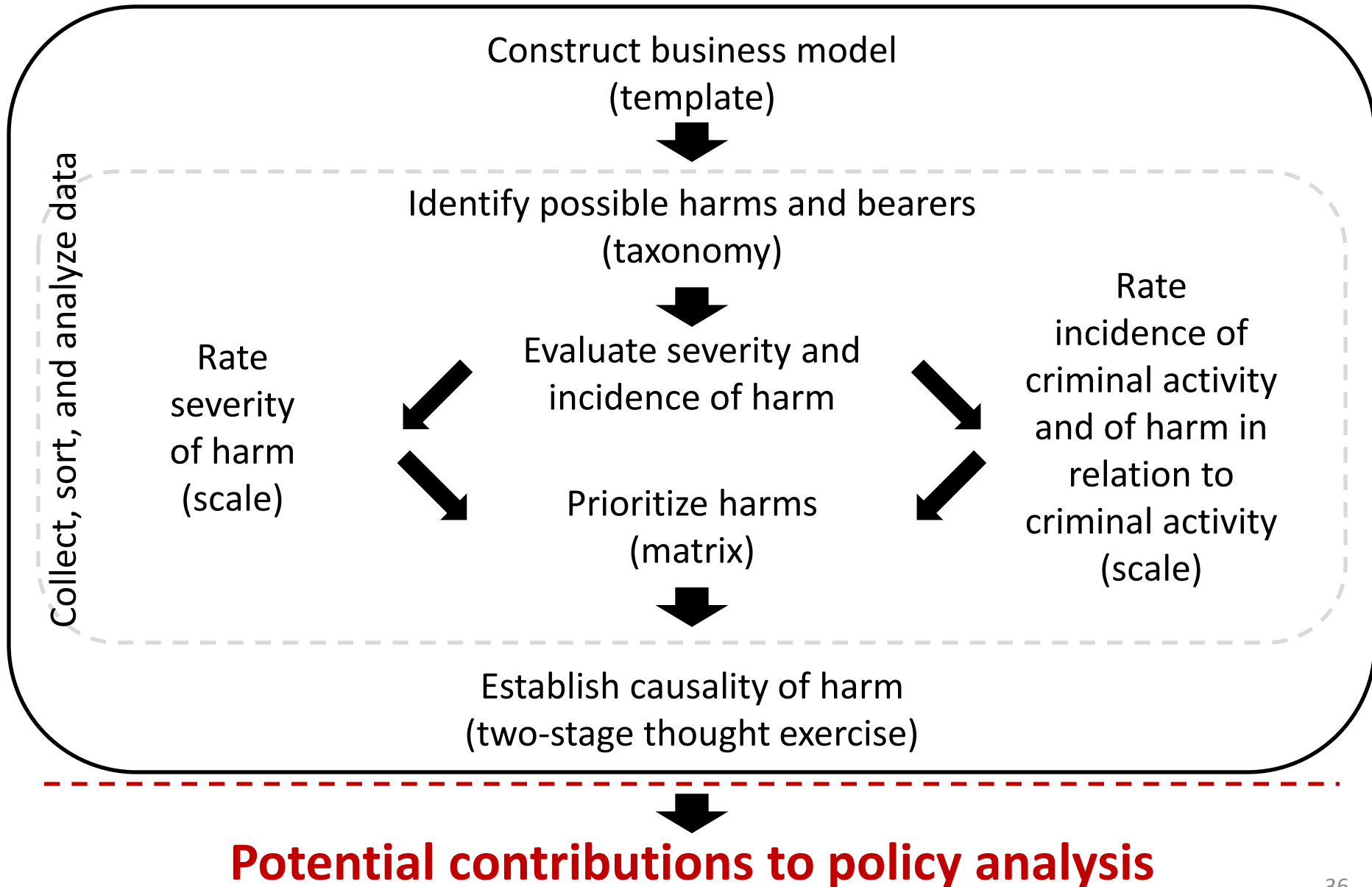
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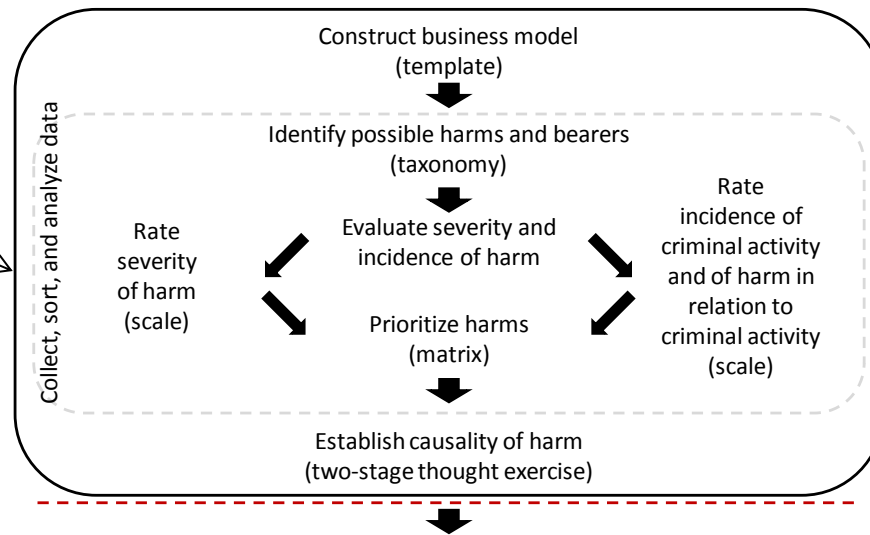
Addressing criticisms from left and right

- Criticisms from the left:
 - Neglect of constructed nature of crime concept, excessive focus on ordinary crimes, no normative theories
 - **Harm assessment contributes to “deconstruction” of crime concept and establishes harms of (criminalized) activities**
- Criticisms from the right:
 - Search of root causes of crime is irrelevant to policy
 - **Harm assessment identifies harms caused by policy, immediate starting point for alleviation of harms of crime**

Framework consists of process and tools



Create
inputs



Potential contributions to policy analysis

Identify types
and bearers
of harms

Compare
harms of
different
criminal
activities

Identify
“harmful”
perpetrators

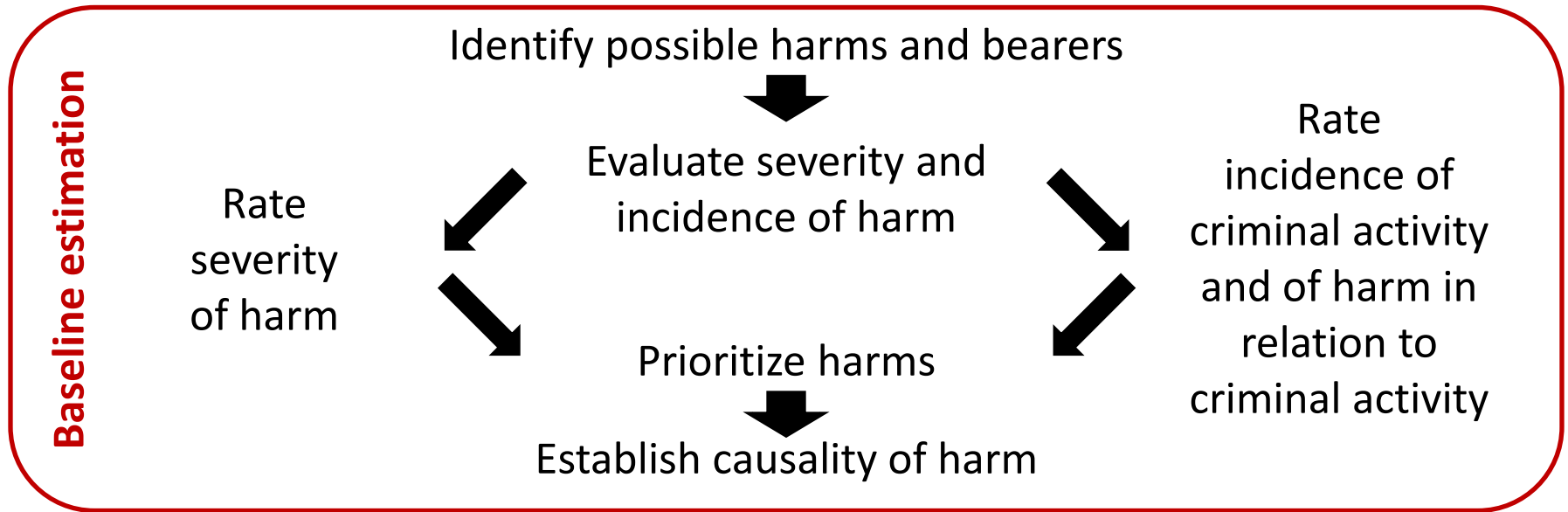
Gauge
seriousness
of offence/
sentence

Compare
impacts of
current and
proposed
policy
options

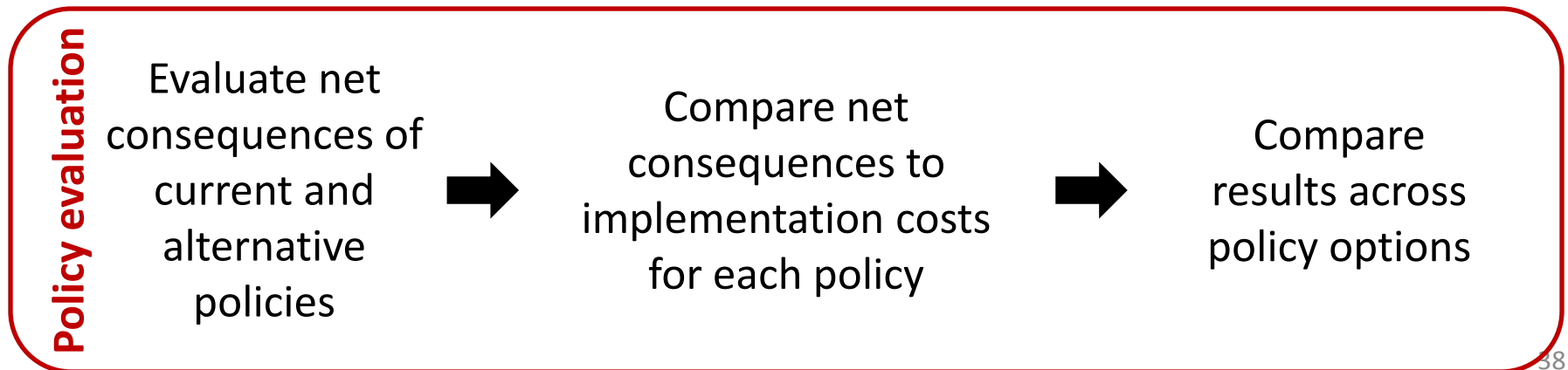
**Support establishment of priorities, pursuit of effectiveness
and accountability, criminalization and sentencing**

Harms and policy analysis

Step 1: Assess harms associated with criminal activities



Step 2: Assess current and proposed policy measures



Towards the “de-automation” of crime control?

- Mill’s (1859) formulation of harm principle:
 - “The only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to others”
- Empirical questions follow regarding
 - Distribution and intensity of harm
 - Effectiveness of policy and enforcement in relation to harm

**Criminology should provide (better)
answers to these questions**

Back up slides

References

- Greenfield, V., and Paoli, L., “A Framework to Assess the Harms of Crimes,” *British Journal of Criminology*, advance access publication, May 13, 2013, Vol. 53, 2013, pp. 864–885, available online at <http://bjc.oxfordjournals.org/content/53/5/864>.
- Greenfield, V. and Camm, F., *Risk Management and Performance in the Balkans Support Contract*, MG-282-A, Santa Monica, CA: RAND Corporation, 2005, available online at <http://www.rand.org/pubs/monographs/MG282.html>.
- Paoli, L., Greenfield, V. A. and Zoutendijk, A. (2013), ‘The Harms of Cocaine Trafficking: Applying a New Framework for Assessment’, *Journal of Drug Issues*, Vol. 43(4), October 2103, pp. 407-436, available online at <http://jod.sagepub.com/content/43/4/407>.
- Sen, A., ‘The Standard of Living: Lecture I, Concepts and Critiques and The Standard of Living: Lecture II, Lives and Capabilities’, in G. Hawthorn, ed., *The Standard of Living—The Tanner Lectures*, Clare Hall, Cambridge, 1985, 1–19, 20–38, Cambridge: Cambridge University Press, 1987.
- U.S. Department of the Army, *Risk Management*, ATP 5-19, Army Headquarters, April 2014, available for download at http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/atp5_19.pdf.
- U.S. Department of the Army, Marine Corps, Navy, and Air Force, *Risk management: Multiservice tactics, techniques, and procedures for risk management* (FM3-100.12, MCRP 5-12.1c, NTTP 5-03.5, and AFTTP[I] 3-2.34), Air Land Sea Application Center, 2001.
- Von Hirsch, A. and Jareborg, N., ‘Gauging Criminal Harms: A Living Standard Analysis’, *Oxford Journal of Legal Studies*, 11, pp. 1–38, 1991.

Framework acknowledges and circumscribes normativity

- Defines harm as violation of legitimate interests, following MacCormick (1982: 30)

“Criminal law in so far as it is concerned with fending off harmful behaviour is necessarily geared to protection of what are legitimate interests according to a certain dominant political morality”
- Sets out explicit criteria for legitimacy and interests
 - Excludes benefits of criminal acts to criminals and losses of criminal gains, but includes injuries to perpetrators
 - Builds on Von Hirsch and Jareborg (1991) and Sen (1987)

Normativity is unavoidable, not immobilizing

NL is “hub” not just entry point

- Large shipments entering BE and NL are cut and repackaged in NL for further distribution throughout Europe
- Several NL-based traffickers orchestrate shipments along entire supply chain
 - Have origin in and/or links to former Dutch colonies in Central America
 - Represent Colombian organizations
 - Maintain high-level intercontinental contacts

Evidence of violence in NL

- Criminal proceedings provide evidence of violence/ threats in NL, mostly among traffickers
 - E.g., planned murder, blackmailing, rip-deals, kidnapping
 - Seizures of weapons or armored cars
- Experts confirm picture and add some cases of fatal violence and of fatal accidents (7 in last 10 years) in NL
- Convicted traffickers also indicate use of violence
 - Six of 13 were victims/offenders of serious violence, 2 witnesses
 - One trafficker convicted of murder in cocaine conflict
- WODC monitor indicates average of 10 drug-related (non-specific, incl. users) violent deaths/year in 1992-2009

Possible harms, individuals (NL, BE)

	Traffic	Money laundering	Corruption	Violence	Bearers
Functional integrity (Loss of life)	X	n/a	n/a	X (NL only)	Body-packers and, in NL, other traffickers in cases of fatal injuries, fatal accidents (e.g., extraction lab explosions), suicides or murders
Functional integrity (Other)	X	n/a	n/a	n/a	Body-packers and other traffickers in cases of nonfatal injuries
	n/a	n/a	n/a	X	Traffickers, facilitators, and government officials/representatives targeted by use or threat of violence
Material interests	X	n/a	n/a	X	Ancillary to functional harms (health)
Reputation	n/a	n/a	n/a	X	Government officials/representatives targeted by use or threat of violence
Privacy	n/a	n/a	n/a	n/a	n/a

NOTES: X= applicable; n/a = not applicable; NL = The Netherlands.

Possible harms, private-sector entities (NL, BE)

	Traffic	Money laundering	Corruption	Violence	Bearers
Functional integrity	X	n/a	X	n/a	Transport/import businesses, e.g. if corrupt officials/employees or traffickers misuse assets
	n/a	X (NL only)	n/a	n/a	Companies of lawyers and accountants facilitating money laundering
Material interests	X	n/a	X	n/a	Ancillary to functional harms (property) and independent (e.g., property, wages associated with neglect of duties)
	n/a	X (NL only)	n/a	n/a	Companies of lawyers and accountants facilitating money laundering
Reputation	X	n/a	X	n/a	Transport/import businesses, e.g. if corrupt officials/employees or traffickers misuse assets, even if businesses are unaware
	n/a	X (NL only)	n/a	n/a	Companies of lawyers and accountants facilitating money laundering
"Privacy"	X	n/a	X	n/a	Transport/import businesses, e.g. if corrupt officials/employees or traffickers misuse assets
	n/a	X (NL only)	n/a	n/a	Companies of lawyers and accountants facilitating money laundering

NOTES: X= applicable; n/a = not applicable; NL = The Netherlands.

Possible harms, government (NL, BE)

	Traffic	Money laundering	Corruption	Violence	Bearers
Functional integrity	n/a	n/a	X	n/a	Government agencies, i.e., if officials/representatives engage in corrupt practices, incl. neglect of duties
Material interests	X	n/a	X	X*	Ancillary to functional harms (health) and independent (e.g., wages associated with neglect of duties)
Reputation	n/a	X (NL only)	X	n/a	Government agencies, i.e., if officials/representatives engage in corrupt practices, incl. neglect of duties, and money laundering
	X	X	X	X	Government writ large, for non-enforcement
“Privacy”	n/a	n/a	X	n/a	Government agencies, i.e., if officials/representatives engage in corrupt practices, incl. neglect of duties

NOTES: X= applicable; n/a = not applicable; NL = The Netherlands.

*Omitted from our prior (published) analysis of cocaine trafficking in Belgium.

Incidence provides grounding for prioritizing harms

Matrix of severity, incidence, and priorities

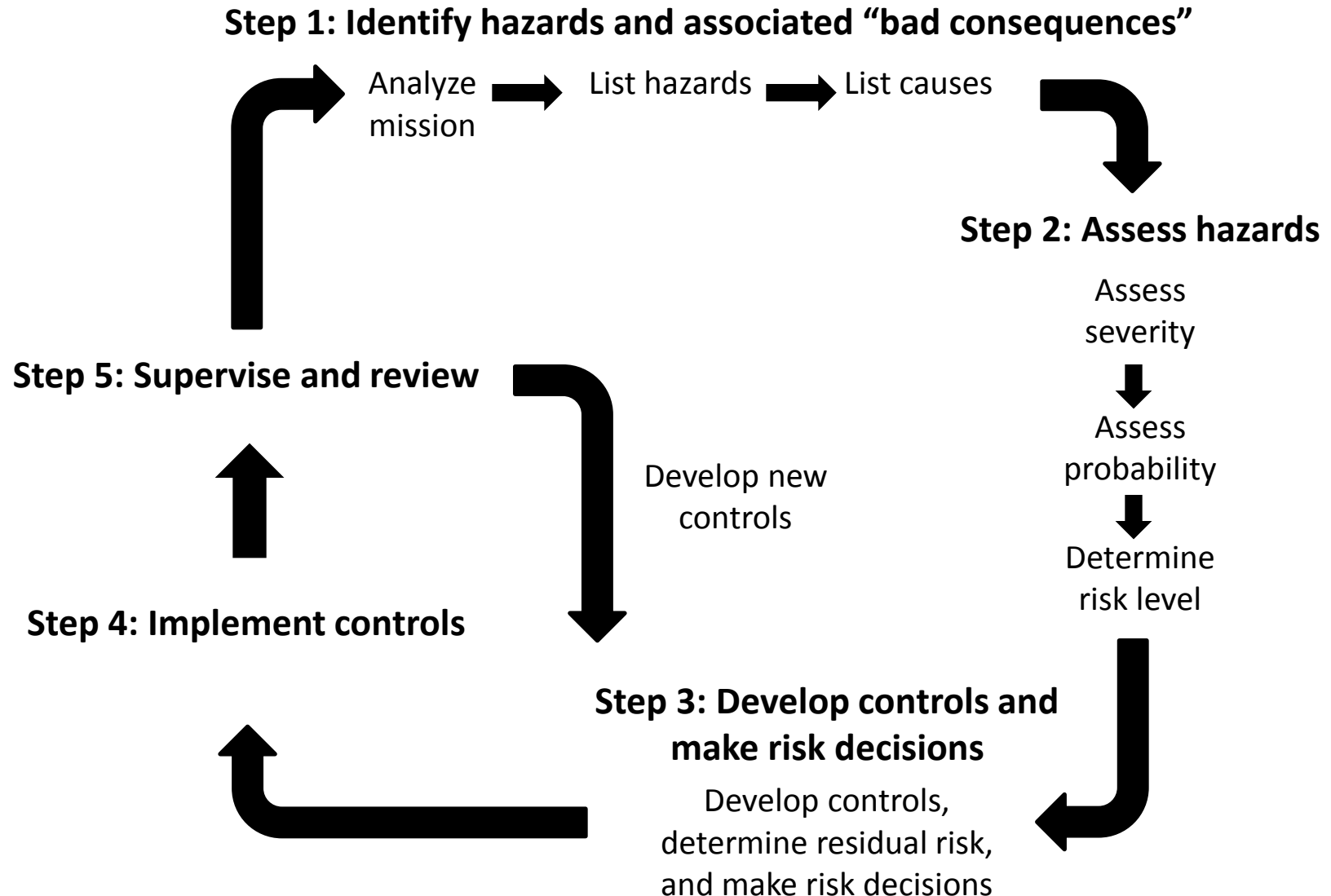
SEVERITY	INCIDENCE				
	Continuously	Persistently	Occasionally	Seldom	Rarely
Catastrophic	VH	H	H	H/M	M
Grave	H	H	H/M	M	M/L
Serious	H	H/M	M	M/L	L
Moderate	H/M	M	M/L	L	L
Marginal	M	M/L	L	L	L

SOURCE: Authors based on Greenfield and Camm (2005), US Army (2001, 2014).

NOTES: **VH** = very high; **H** = high; **M** = medium; **L** = Low priority.

Cocaine trafficking persistent in BE and NL (daily, weekly)

5-Step Risk Management Process



5-Step Risk Management Process



Risk Assessment Matrix

Severity	Probability				
	Frequent	Likely	Occasional	Seldom	Unlikely
Catastrophic	E	E	H	H	M
Critical	E	H	H	M	L
Marginal	H	M	M	L	L
Negligible	M	L	L	L	L
E = Extremely high risk; H = High risk; M = Moderate risk; L = Low risk					

